

WHAT BUSINESSES CAN EXPECT FROM THE BIDEN ADMINISTRATION

Part 1: Business Insurance Update – Reggie Reiter

Part 2: The Practical Impact – Michael Trachtman

Part 3: Employee Benefits Landscape – Kevin Davis



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BUSINESS INSURANCE: IMPACT OF THE BIDEN ADMINISTRATION

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Current State of the P&C Insurance Market

- One word ... Disrupted!
- Recipe for the current “Hard Market” state
 - COVID-19 claims, legislative and social pressure, uncertainties of total impact/duration
 - Reduced underwriting income from years of suppressed rates
 - Continuation of low interest rate environment
 - Social inflation concerns
- Impact for business insurance buyers
 - Substantial premium increases
 - Underwriting appetites shrinking
 - More restrictive forms and endorsements



Biden Administration Impact on Business Insurance

- The industry is heavily regulated at the state-level which limits the impact of federal-level action
- Things to keep an eye on
 - Corporate tax rate increases
 - Increased pressure for the industry to establish a Pandemic Insurance Program
 - Increased regulations and enforcement from OSHA
 - Social justice reform and challenges to risk-based pricing models



Preparing Your Business for the Impacts

- Mindset = Control your destiny!
 - Focus your energy internally to cut through the external pressure
- Strategy-based vs. transaction-based risk management outlook
- Review/refresh your safety and risk management protocols
- Aim to be “best in class” and partner with the right broker
- Be engaged, but be patient

WHAT BUSINESSES CAN EXPECT FROM THE BIDEN ADMINISTRATION

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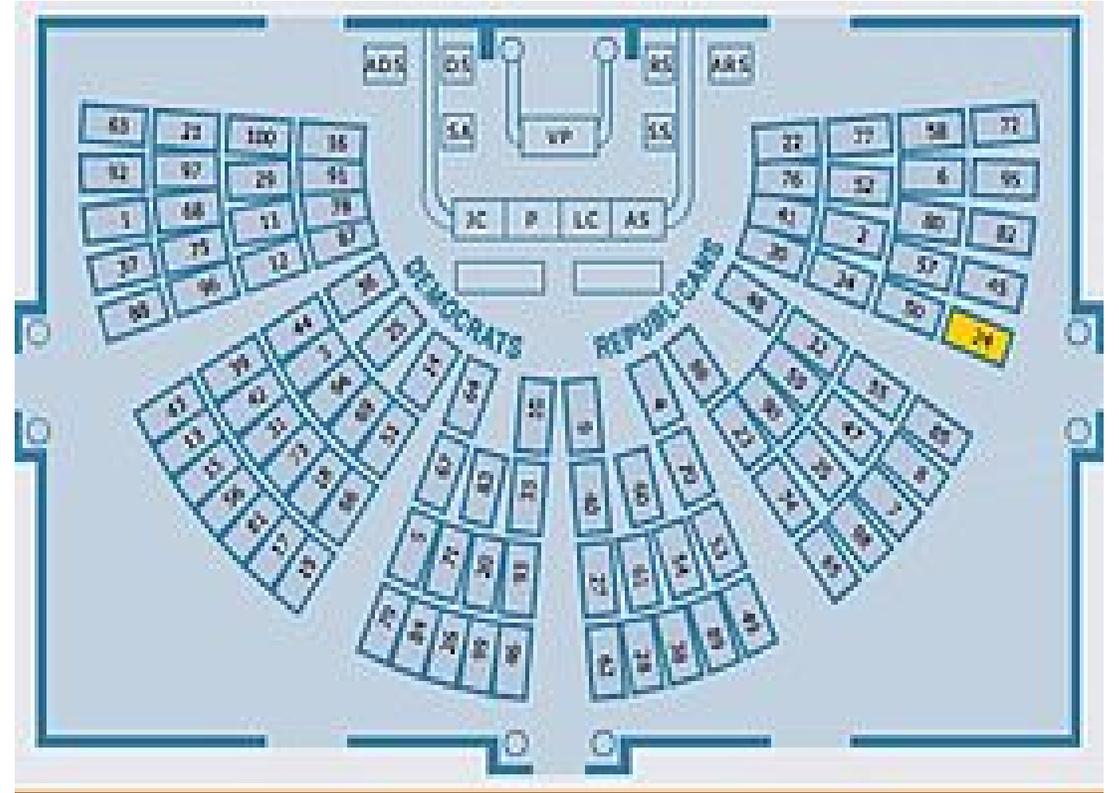
THE INFLECTION POINT

THE EFFECT OF
JANUARY 6, 2021



WHAT THE GEORGIA RUNOFFS CHANGED

- The Dynamics of Compromise
- The Cabinet
- The Federal Agencies
- The Judiciary
- The Legislative Agenda
- The Regulatory Agenda





THE MOST
POWERFUL
PERSON IN
AMERICA?

THE EFFECT OF THE CAPITOL BREACH

- Has the 11-8-22 strategy changed?
- Trump: Magnetic or Radioactive?
- McConnell: Obama approach or deal-making approach?
- Will D's meet them halfway?

EXECUTIVE
ORDERS:
COVID

MUCH LESS: “leave it to the states”

- Federal vaccination/testing control
- National emergency mandates (quarantine, “super-spreader” ...)
- Heightened federal enforcement
- ADA, retaliation enforcement
- Defense Production Act

EXECUTIVE
ORDERS:
SMALL
BUSINESS

- Federal contracting: favor small, MBE, disadvantaged area businesses
- Federal contracting: disfavor if outsource jobs, fail to pay \$15-per-hour minimum wage, “union busting”
- Federal infrastructure projects, support of “green” enterprises as small business relief
- Federal regulations: “Buy Clean”, “Buy American” incentives
- Federal regulations: restore, increase limits on greenhouse gases, fossil fuels
- Free trade ... but keep China tariff policy

BE PREPARED: SMALL BUSINESS RELIEF PACKAGE

- “Main Street” recovery aid for entrepreneurs, *small* businesses
- *Grant* program for businesses damaged beyond stated limit
- Covid compliance assistance for businesses
- “Opportunity Fund” for disadvantaged areas, minorities
- Expansion, rule changes for PPP, SBA loans (EIDL + more)
- Climate change opportunities

BE PREPARED: WORKSITES

- *Substantially* increased OSHA activity, staffing, enforcement
- *National* employer standards
 - Protective equipment, distancing, limit number of employees, mandated remote work when feasible.
 - Sanitation and housekeeping
 - Employee training
 - Air movement standards
 - Quarantining

BE PREPARED: WORKER CLASSIFICATION

- Biden priority: significant enforcement, increased penalties
- Employees classified as independent contractors to avoid employment laws (**independent contractor definition change**)
- Gig worker: new hybrid classification?
- Non-exempt made exempt to avoid OT (**exempt definition change**)
- Can work around Congress

BE PREPARED: PAID LEAVE – COVID AND BEYOND

- **Agenda:** For mandatory quarantine, 100% wage up to \$1,400/week, cover domestic workers, caregivers, **gig workers and independent contractors**. Retain tax benefits.
- **Agenda:** Biden supports what is essentially paid FMLA
- Difficult to pass given current small business burdens: couple with assistance package in exchange for business liability shield?
- **Watch out for the states and cities...**

BE PREPARED: UNIONIZATION

- Biden is a “union man”. DOL head union president, organizer.
- Expect
 - Unit composition
 - Authorization cards, no election
 - “Snap” election
 - Amplified penalties for “interfering”
- NLRB has power (but will take time to flip)

BE PREPARED: NONCOMPETES

- How can a failing company succeed? Take the key employees and know-how of successful companies.
- Biden: Adverse to non-competes; may use an FTC work-around. Many states already there.
- Courts will become much more sympathetic to key employees looking to salvage careers
- Key people, basic know-how, “secret sauce” at risk

THE PLAN ...



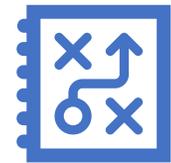
INFORMED



NIMBLE



COMPLIANT



STRATEGIC

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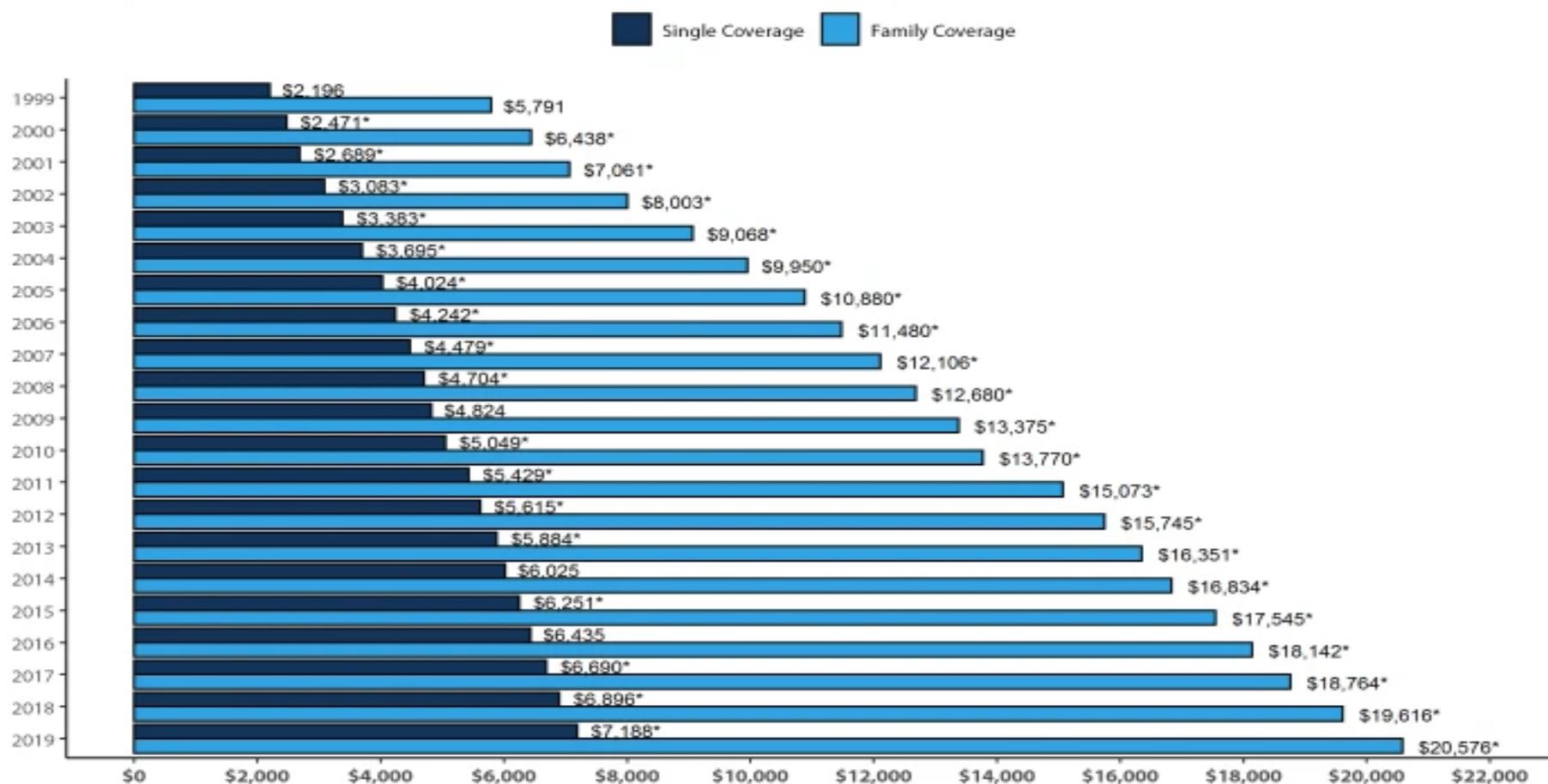
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EMPLOYEE BENEFITS: IMPACT OF THE BIDEN ADMINISTRATION

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Figure 1.10
Average Annual Premiums for Single and Family Coverage, 1999-2019

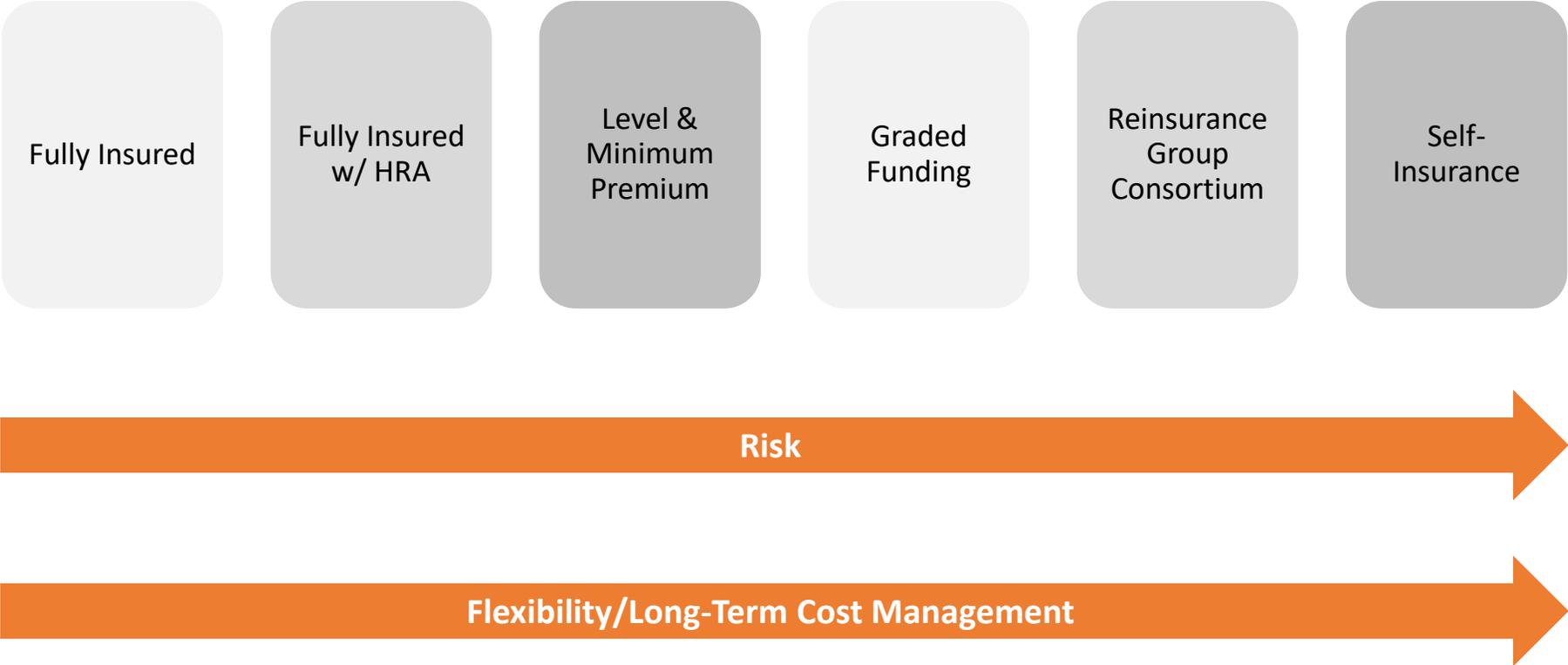


* Estimate is statistically different from estimate for the previous year shown ($p < .05$).

SOURCE: KFF Employer Health Benefits Survey, 2018-2019; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2017



Healthcare Finance Spectrum



Self-Insurance Overview

- Alternative benefits funding strategies can help mitigate the financial impact of a community rating environment.
- These alternatives include:
 - level-funding which can provide greater certainty and protection
 - partially self-funded solutions for larger employers, including consortiums
- These alternative funding solutions are outside the community rating rules, which means employers could benefit from:
 - a reduction in taxes or fees
 - a reduction due to eliminating carrier profit
 - decrease by returning to a more favorable rating method
- Self-insuring provides greater flexibility and discretion
- It is not a fit for all employers but a worth consideration for the potential cost-savings, transparency, and flexibility of the plans



ACA Compliance Checklist

- Reporting reminders
 - Employer Reporting (ALEs only): Prepare and distribute Form 1095-C to each person who was a full-time employee for any month in the calendar year to report whether health coverage was offered.
 - File copies of Form 1095-C, along with transmittal Form 1094-C, with the IRS. Forms for each calendar year are due early in the following year.
 - Health Coverage Reporting (self-funded plan sponsors): Prepare and distribute Form 1095-B to persons covered by the plan for any month in the calendar year, and file copies along with Form 1094-B with the IRS. If plan sponsor also is an ALE, use Forms 1095-C and 1094-C in lieu of Forms 1095-B and 1094-B.



ACA Compliance Checklist

- Employers are advised to maintain detailed documentation of all materials, data, and records used in meeting their requirements under the ACA. Examples include:
- Copies of required notices and description of distribution processes. Data used in determining enrollment counts for purposes of PCORI fees (self-funded plans).
- Data used in preparing statements and IRS forms (1094s, 1095s, W-2s, as applicable) and description of distribution and filing processes. If filing electronically, maintain records of testing protocols. Document, by employee, whether the full-time employee definition was met and, if so, document the employer's health coverage offer to the employee. Maintain proof of the plan's status as minimum essential coverage, minimum value coverage and/or affordable coverage, as applicable.



THANK YOU! QUESTIONS?

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